

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 786 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDRESH P MAJMUDDAR

Versus

PRITI CHETANBHAI DALAL PROP OF D T GANDHI SERVICE

Appearance:

1. Special Criminal Application No. 786 of 2002
MR BB DESAI for Petitioner No. 1
Mr S S Patel, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/07/2003

ORAL JUDGEMENT

The present petition under Article 227 of the
Constitution of India has been filed by the
petitioner-original accused in criminal case no. 36498

of 1998 pending before the learned Judicial Magistrate First Class, Bharuch. It appears that the above criminal case is pending before the above court for offence punishable under section 138 of the Negotiable Instruments Act, 1881. In the said complaint, the present petitioner is shown as accused before the said court. Therefore, the petitioner submitted application at page 24 stating that the accused may be discharged from the said offence under section 227 of the Code of Criminal Procedure, 1973. The trial court heard the parties and directed that till the disposal of the Special Civil Suit No.43/98 filed by the present respondent against the original accused/petitioner is disposed, the further proceedings of the aforesaid criminal complaint be stayed. Feeling aggrieved by the said order of the trial court dated 6.10.2000, the contesting respondent preferred criminal revision application No.138/2000 which was allowed by the learned Addl.Sessions Judge by judgment and order dated 28.6.2002. The petitioner-original accused has preferred this petition before this court under Article 227 of the Constitution of India challenging the said order.

2. On hearing, it is found that by the aforesaid application, the petitioner had applied for his discharge from the said criminal case under section 227 of the Criminal Procedure Code, 1973 (for short, 'the Code') instead of granting or rejecting the said prayer, the learned trial Magistrate directed stay of the aforesaid criminal case during the pendency of the Special Civil Suit No.43 of 1998 filed by the contesting respondent against the petitioner. Apparently, it is clear that the above prayer was not sought for by the present petitioner. The prayer made by the petitioner was to discharge him from the said criminal complaint. The said prayer has not been granted. From the aforesaid position, it is very clear that unless it is apparent on the face of record that it is extremely necessary to stay the criminal proceeding during the pendency of a Special Civil Suit, the Court should not have stayed the criminal proceedings during the pendency of the Special Civil Suit, particularly when it was not sought to be stayed.

3. In the present case, we find that the criminal complaint was on issuance of a cheque under section 138 of the Negotiable Instruments Act. 1881. There the technicality of law will be required to be considered. The court will be required to consider if the cheque was issued and it was dishonoured on the ground of 'want of sufficient balance' and if legal notice has been issued within the stipulated period. The court will also be

required to consider if the payment was not made in accordance with the requirement of law within the stipulated period. These are some of the requirements to be considered at the time of dealing with a complaint under section 138 of the said Act. So far as the Special Suit is concerned, it is required to be considered on a different footing. The above consideration may not be there for the purpose of deciding said suit. Therefore, when the considerations are different, the criminal proceeding was not required to be stayed till disposal of the aforesaid suit. In that case, the approach of the learned Addl. Sessions Judge in allowing criminal revision application and in vacating the order of stay of further proceeding of the criminal case cannot be treated to be illegal. Consequently, there is no merit in the present petition and hence it is required to be dismissed. Mr S S Patel, learned APP also agrees that there was no need to stay the criminal proceedings.

4. For the foregoing reasons, this petition is ordered to be dismissed at admission stage.

[D P Buch, J.]

msp